

Section 11.4 Rate Stabilization Fund. There is hereby established a special trust fund, the name of which shall be the "Jefferson County Sewer System Rate Stabilization Fund." The Governing Body may at any time and from time to time designate any banking institution or institutions as depository or depositories for the Rate Stabilization Fund, provided that each such depository so designated shall at all times while acting as such be and remain a member of the Federal Deposit Insurance Corporation or of any agency of the United States of America that may succeed to its functions, if there be any such, and shall be and remain duly qualified to do business in the State of Alabama. Simultaneously with the issuance of the Series 1997 Warrants, the County shall deposit into the Rate Stabilization Fund the sum of \$10,000,000 from moneys that are not proceeds of the Series 1997 Warrants or of any other obligations of the County.

At any time when the total amount held in the Rate Stabilization Fund is less than the Rate Stabilization Fund Requirement, the County shall pay into the Rate Stabilization Fund from the Revenue Account, on or before each February 15 and each August 15 and after there shall have been made from the Revenue Account all payments required to be made on or before such date into the Debt Service Fund and the Reserve Fund, an amount equal to 10% of the then effective Rate Stabilization Fund Requirement (or such lesser amount as shall result in the amount held in the Rate Stabilization Fund being equal to the Rate Stabilization Fund Requirement). In addition, the County may from time to time deposit into the Rate Stabilization Fund other moneys that do not constitute System Revenues.

The County may, from time to time at the election of the County's Director of Finance, transfer moneys from the Rate Stabilization Fund into the Revenue Account.

Section 11.5 Depreciation Fund. There is hereby established a special trust fund, the name of which shall be the "Jefferson County Sewer System Funded Depreciation Fund." The Governing Body may at any time and from time to time designate any banking institution or institutions as depository or depositories for the Depreciation Fund, provided that each such depository so designated shall at all times while acting as such be and remain a member of the Federal Deposit Insurance Corporation or of any agency of the United States of America that may succeed to its functions, if there be any such, and shall be and remain duly qualified to do business in the State of Alabama.

At any time when the total amount held in the Depreciation Fund is less than the amount of accumulated depreciation referable to the System (as known in the then most recent audited financial statements of the County), the County shall pay into the Depreciation Fund from the Revenue Account, on or before each February 15 and each August 15 and after there shall have been made from the Revenue Account all payments required to be made on or before such date into the Debt Service Fund, the Reserve Fund and the Rate Stabilization Fund, the sum of \$5,000,000. If on any such date the moneys available in the Revenue Account are not sufficient to permit a deposit of said sum into the Depreciation Fund, such shortfall shall not increase the required amount of any subsequent deposit to the Depreciation Fund. Moneys held in the

Depreciation Fund may be withdrawn from time to time by the County, but only to pay the costs of System Improvements or to purchase or redeem Parity Securities.

Section 11.6 Surplus Revenues. After making the transfers and payments required by Sections 11.1 through 11.5 hereof, and after making good any delinquency or deficit existing in the Debt Service Fund or the Reserve Fund by reason of withdrawals therefrom or the failure during any prior period to pay therein the amounts respectively required to be paid therein by the provisions of Sections 11.2 and 11.3 hereof, the balance remaining in the Revenue Account on each February 15 and each August 15 shall be deemed "surplus revenues" and may be withdrawn from the Revenue Account by the County and used for any lawful purpose related to the County's ownership and operation of the System.

For purposes of this section a deficiency in the Debt Service Fund or the Reserve Fund shall be the difference between the amount then held in such fund and the amount scheduled to be held therein pursuant to the respectively applicable provisions of Section 11.2 or 11.3 hereof.

Section 11.7 Redemption Fund. There is hereby created a special trust fund, the name of which shall be the "Jefferson County Sewer System Redemption Fund" and which shall be maintained as long as any of the Parity Securities are outstanding. There shall be paid into the Redemption Fund only such moneys as are herein expressly required to be paid therein. The Trustee shall, subject to the provisions of Section 11.8 hereof, use and apply the moneys in the Redemption Fund solely for the purpose of redeeming Parity Securities prior to their maturity; provided that if at any time the aggregate of available moneys held in the Debt Service Fund shall not be sufficient to pay the principal of or the interest on any of the Parity Securities at the respective maturities of such principal and interest or the redemption price of any of the Parity Securities on the date on which, under the terms hereof, they are required to be redeemed, then the moneys held in the Redemption Fund shall be used to pay said principal or interest so maturing or the redemption price of any such Parity Securities, but only to such extent as may be necessary to prevent default in the payment thereof.

Not more than sixty (60) days and not less than forty-five (45) days prior to each Interest Payment Date, the Trustee will determine the amount then held in the Redemption Fund, and if such amount is sufficient to effect the redemption of at least \$5,000 in principal amount of Parity Securities, the Trustee shall so notify the County, whereupon the County will take such action as may be necessary under the provisions hereof to exhaust, as nearly as may be practicable, the moneys held in the Redemption Fund by effecting the redemption of Parity Securities on the earliest practicable date thereafter on which such redemption may be effected.

Section 11.8 Investment of Indenture Fund Moneys. Moneys on deposit in the Indenture Funds shall be invested by the Trustee or the depository therefor in accordance with the succeeding provisions of this section in Eligible Investments; provided, however, that the moneys

at any time held in the Debt Service Fund may be invested only in Federal Obligations having stated maturities, or being redeemable at the option of the holder thereof at a stated price and time, not later than the date upon which such moneys will be needed for the payment of principal of or interest on the Parity Securities. The investments held in each of the other Indenture Funds shall have such maturities as shall result in the availability at all times of sufficient cash moneys for the various purposes to be served by each of such funds.

Subject to the limitations imposed by the provisions of the first paragraph of this section, the County hereby reserves the right to control the investment of the moneys at any time on deposit in the Indenture Funds and hereby designates the County's Director of Finance as its representative for the purpose of communicating investment decisions to the Trustee. In particular, and without limiting the generality of the foregoing, County's Director of Finance may from time to time specify to the Trustee the types and maturities of the Eligible Investments to be acquired with the moneys held in the Indenture Funds, the price to be paid for such investments and the securities dealer or dealers from which such investments are to be acquired. So long as such directions from the County's Director of Finance are not inconsistent with the provisions of the first paragraph of this section, the Trustee will acquire the specified investments from the specified dealer or dealers and at any specified price, regardless of its opinion as to the prudence of such investments or its ability to acquire such investments upon more favorable terms from another source; provided, however, that the County's Director of Finance shall have no right to require, and the Trustee shall be prohibited from making, any investment that would result in any of the Parity Securities being considered "arbitrage bonds" within the meaning of Section 148 of the Code and the applicable regulations thereunder. In the absence of general or specific investment directions from the County's Director of Finance, the Trustee shall invest the moneys held in the Indenture Funds in accordance with its general practices respecting the investment of public moneys held in trust. The Trustee shall not be liable or responsible for any loss resulting from any investment made in accordance with the provisions of this paragraph.

All Eligible Investments in which any portion of the moneys in any Indenture Fund are invested, together with all income therefrom, shall become a part of the particular Indenture Fund from which moneys were used to make such investment; provided that (a) so long as the balance in the Reserve Fund is equal to the Reserve Fund Requirement, any income or profits derived from the investment of moneys held in the Reserve Fund shall be transferred to the Debt Service Fund Primary Account and (b) so long as the balance in the Rate Stabilization Fund is equal to the Rate Stabilization Fund Requirement, any income or profits derived from the investment of moneys held in the Rate Stabilization Fund shall be paid to the County.

Section 11.9 Commingling of Moneys in Separate Indenture Funds. Any provision hereof to the contrary notwithstanding, moneys on deposit in any Indenture Fund may be commingled and combined with moneys in any of the other Indenture Funds for the purpose of making investments under the provisions of Section 11.8 hereof, subject to the following conditions:

(a) all interest, income or profit realized from any such commingled investment shall be credited, and all losses resulting therefrom shall be charged, to each such fund in the same respective proportions as the amount invested from each such fund bears to the total amount so invested (subject, however, to the provisions of the said section which, under certain circumstances, provide for a different disposition of the earnings from the Reserve Fund or the Rate Stabilization Fund); and

(b) no moneys forming a part of any such fund shall be invested in any investments other than such as are expressly authorized herein.

Section 11.10 Valuation of Indenture Funds. Any investments constituting a part of the Indenture Funds shall, for purposes of this Indenture, be valued at their fair market value (exclusive of accrued interest), except that any investments having a term of less than six months may be valued at par. The Trustee shall make a valuation of investments in the Reserve Fund on the first Business Day of each calendar month and at such other times as the County may request or as may be necessary to ascertain compliance with the provisions of the Indenture. If as a result of such valuation the balance in such fund is determined to be less than the balance required to be maintained therein under the terms of this Indenture, then monthly transfers to such fund shall be resumed and continued as required by Section 11.3 hereof.

Section 11.11 Reserve Fund Surety Requirements. The County may satisfy all or a portion of the Reserve Fund Requirement by the deposit with the Trustee of a surety bond, insurance policy or letter of credit that satisfies the succeeding requirements of this Section 11.11.

A surety bond or insurance policy issued to the Trustee by a company licensed to issue insurance policies guaranteeing the timely payment of debt service on municipal bonds (a "municipal bond insurer") may be deposited in the Reserve Fund to meet the Reserve Fund Requirement if the claims paying ability of the issuer thereof is rated "AAA" or "Aaa" by S&P or Moody's, respectively. A surety bond or insurance policy issued to the Trustee by an entity other than a municipal bond insurer may be deposited in the Reserve Fund to meet the Reserve Fund Requirement if the form and substance of such instrument and the issuer thereof are approved by the Bond Insurer.

An unconditional irrevocable letter of credit issued to the Trustee by a bank may be deposited in the Reserve Fund to meet the Reserve Fund Requirement if the issuer thereof is rated at least "AA" by S&P or "Aa" by Moody's. Any such letter of credit shall be payable in one or more draws upon presentation by the Trustee of a sight draft accompanied by its certificate that it then holds insufficient funds to make a required payment of principal of or interest on the Parity Securities. Any such draw shall be payable within two days of presentation of the related sight draft. Any such letter of credit shall be for a term of not less

than three years. The issuer of any such letter of credit shall be required to notify the County and the Trustee, not later than 30 months prior to the stated expiration date of such letter of credit, as to whether such expiration date will be extended, and if so, shall indicate the new expiration date. If any such notice indicates that the expiration date will not be extended, the County shall deposit in the Reserve Fund an amount sufficient to cause the cash or Eligible Investments on deposit in the Reserve Fund, together with any other qualifying credit instruments, to equal the Reserve Fund Requirement on all outstanding Parity Securities, such deposit to be paid in equal installments on at least a semi-annual basis over the remaining term of the letter of credit, unless the letter of credit in question is replaced by another Reserve Fund credit instrument. Any letter of credit in the Reserve Fund shall permit a draw in full not less than two weeks prior to the expiration or termination of such letter of credit if the letter of credit has not been replaced or renewed. The Trustee shall, in turn, draw upon the letter of credit prior to its expiration or termination unless an acceptable replacement is in place or the Reserve Fund is fully funded in its required amount. The use of any Reserve Fund credit instrument pursuant to this section shall be subject to receipt of an opinion of counsel acceptable to the Bond Insurer and in form and substance satisfactory to the Bond Insurer as to the due authorization, execution, delivery and enforceability of such instrument in accordance with its terms, subject to applicable laws affecting creditors' rights generally, and, in the event the issuer of such credit instrument is not a domestic entity, an opinion of foreign counsel in form and substance satisfactory to the Bond Insurer. In addition, the use of an irrevocable letter of credit to satisfy all or a portion of the Reserve Fund Requirement shall be subject to receipt of an opinion of counsel acceptable to the Bond Insurer and in form and substance satisfactory to the Bond Insurer to the effect that payments under such letter of credit would not constitute avoidable preferences under Section 547 of the United States Bankruptcy Code or similar state laws with avoidable preference provisions in the event of the filing of a petition for relief under the United States Bankruptcy Code or similar state laws by or against the County.

The obligation to reimburse the issuer of a Reserve Fund credit instrument for any fees, expenses, claims or draws upon such Reserve Fund credit instrument shall be subordinate to the payment of debt service on the Parity Securities. The right of the issuer of a Reserve Fund credit instrument to payment or reimbursement of its fees and expenses shall be subordinated to cash replenishment of the Reserve Fund, and, subject to the second succeeding sentence, its right to reimbursement for claims or draws shall be on a parity with the cash replenishment of the Reserve Fund. Any Reserve Fund credit instrument shall provide for a revolving feature under which the amount available thereunder will be reinstated to the extent of any reimbursement of draws or claims paid. If the revolving feature is suspended or terminated for any reason, the right of the issuer of the Reserve Fund credit instrument to reimbursement will be further subordinated to cash replenishment of the Reserve Fund to an amount equal to the difference between the full original amount available under the Reserve Fund credit instrument and the amount then available for further draws or claims. If (a) the issuer of a Reserve Fund credit instrument becomes insolvent or (b) the issuer of a Reserve Fund credit instrument defaults in its payment obligations thereunder or (c) the claims-paying ability of the issuer of a Reserve Fund insurance policy or surety bond falls below an S&P "AAA" or a Moody's "Aaa" or (d) the rating of the issuer of a Reserve Fund letter of credit falls below an S&P "AA", the

obligation to reimburse the issuer of such Reserve Fund credit instrument shall be subordinate to the cash replenishment of the Reserve Fund.

If (a) the revolving reinstatement feature of a Reserve Fund credit instrument described in the preceding paragraph is suspended or terminated or (b) the rating of the claims paying ability of the issuer of a Reserve Fund surety bond or insurance policy falls below an S&P "AAA" or a Moody's "Aaa" or (c) the rating of the issuer of a Reserve Fund letter of credit falls below an S&P "AA", the County shall either (i) deposit into the Reserve Fund an amount sufficient to cause the cash or Eligible Investments on deposit in the Reserve Fund to equal the Reserve Fund Requirement on all outstanding Parity Securities, such amount to be paid over the ensuing five years in equal installments deposited at least semi-annually or (ii) replace such instrument with a surety bond, insurance policy or letter of credit meeting the requirements of this section within six months of such occurrence. In the event (a) the rating of the claims-paying ability of the issuer of a Reserve Fund surety bond or insurance policy falls below "A" or (b) the rating of the issuer of a Reserve Fund letter of credit falls below "A" or (c) the issuer of a Reserve Fund credit instrument defaults in its payment obligations or (d) the issuer of a Reserve Fund credit instrument becomes insolvent, the County shall either (i) deposit into the Reserve Fund an amount sufficient to cause the cash or Eligible Investments on deposit in the Reserve Fund to equal the Reserve Fund Requirement on all outstanding Parity Securities, such amount to be paid over the ensuing year in equal installments on at least a monthly basis or (ii) replace such instrument with a surety bond, insurance policy or letter of credit meeting the requirements of this section within six months of such occurrence. Where applicable, the amount available for draws or claims under a Reserve Fund credit instrument may be reduced by the amount of cash or Eligible Investments deposited in the Reserve Fund pursuant to the preceding provisions of this paragraph.

If the County chooses any of the permitted alternatives to a fully cash-funded Reserve Fund described in the preceding provisions of this Section 11.11, any amounts owed by the County to the issuer of any such credit instrument as a result of a draw thereon or a claim thereunder, as appropriate, shall be included in any calculation of debt service requirements required to be made pursuant to the Indenture for any purpose.

The Trustee shall ascertain the necessity for a claim or draw upon any Reserve Fund credit instrument and provide notice to the issuer of the Reserve Fund credit instrument in accordance with its terms not later than three days (or such longer period as may be necessary depending on the permitted time period for honoring a draw under the Reserve Fund credit instrument) prior to each Interest Payment Date.

Cash on deposit in the Reserve Fund shall be used (or investments purchased with such cash shall be liquidated and the proceeds applied as required) prior to any drawing on any Reserve Fund credit instrument. If and to the extent that more than one Reserve Fund credit instrument is deposited in the Reserve Fund, drawings thereunder and repayments of costs associated therewith shall be made on a pro rata basis, calculated by reference to the maximum amounts available thereunder.

Section 11.12 Issuance Cost Account. There is hereby created a special account the full name of which shall be the "Series 1997 Warrants Issuance Cost Account." The Issuance Cost Account shall be maintained as a separate account until the moneys in said account shall have been fully expended as hereinafter provided. The Trustee shall be the depository and disbursing agent for the Issuance Cost Account.

The County will apply the moneys in the Issuance Cost Account solely for payment of the Issuance Costs, as and when such costs become due and payable. The President of the Governing Body or any Authorized County Representative is hereby authorized and directed to cause the said costs to be paid, as promptly as may be feasible following the issuance of the Series 1997 Warrants and Series 1997-C Warrants, by submitting to the Trustee requisitions signed by any one of said officers directing the payment of the costs specified in said requisition.

In the event the moneys deposited in or transferred to the Issuance Cost Account are not sufficient to pay all Issuance Costs, the President of the Governing Body is hereby authorized and directed to pay, out of any other funds of the County available therefor, the remainder of such costs. If any moneys remain in the Issuance Cost Account after the payment of all costs of issuing the Series 1997 Warrants and Series 1997-C Warrants, the Trustee shall transfer such moneys to the County upon receipt of a certificate signed by the President of the Governing Body or any Authorized County Representative stating that all expenses of issuing the Series 1997 Warrants and Series 1997-C Warrants, to the extent known to or anticipated by the County, have been paid in full.

ARTICLE XII

PARTICULAR COVENANTS AND AGREEMENTS OF THE COUNTY; RELEASE OF PORTION OF THE SYSTEM

Section 12.1 Budget for the System. No later than the first Tuesday in the month of October at the beginning of each Fiscal Year, beginning with the Fiscal Year that begins on October 1, 1997, the County shall cause to be prepared and approved by the Governing Body an annual budget and monthly budgets for the System. Each such budget shall include the following:

- (a) the estimated gross revenues and income to be derived from the System during such Fiscal Year and in each month thereof;
- (b) an estimated sum sufficient to provide for the payment of all Operating Expenses during such Fiscal Year and in each month thereof;

(c) the sum required by this Indenture to be paid into the Debt Service Fund during such Fiscal Year and in each month thereof;

(d) the sum (if any) required by this Indenture to be paid into the Reserve Fund during such Fiscal Year and in each month thereof; and

(e) the sum (if any) expected to be transferred from the Rate Stabilization Fund into the Revenue Account during such Fiscal Year and in each month thereof.

The budget in effect for any Fiscal Year may be amended or revised by the County in accordance with changed circumstances and conditions at any time during such Fiscal Year. The County shall submit a copy of each such budget as initially approved to the Trustee.

Section 12.2 Maintenance of Books and Records; Annual Audits. The County will maintain complete and separate books and records pertaining to the System and all receipts and disbursements with respect thereto. Within ninety (90) days following the close of each Fiscal Year, the County will provide the Trustee with unaudited financial statements respecting the System prepared by the County's financial officers. The County will cause an audit of the books and records for the System to be completed as soon as practicable after the close of each Fiscal Year. Each such audit shall be made by an Independent Accountant and shall include: (a) a statement in reasonable detail of the revenues derived from the System and of Operating Expenses during such Fiscal Year; (b) a statement of changes in fund balances for such Fiscal Year; (c) a balance sheet respecting the System as of the end of such Fiscal Year; (d) a statement of the amounts on deposit in the Indenture Funds at the end of such Fiscal Year; (e) the Independent Accountant's comments regarding the manner in which the County has carried out the requirements of the Indenture; (f) the Independent Accountant's recommendations for any changes or improvements in the financial operation of the System; (g) a list of the insurance policies and fidelity bonds in force with respect to the System at the end of such Fiscal Year, setting out with respect to each such policy the amount thereof, the risk covered, the name of the insurer and the expiration date of the policy; and (h) the number of customers connected to and served by the System at the end of such Fiscal Year, as disclosed by the records of the County and without any requirement of verification thereof by the Independent Accountant. Within one hundred and eighty (180) days following the close of each Fiscal Year, the County will furnish a copy of such audit to the Trustee and to each Rating Agency which has a rating outstanding respecting any series of the Parity Securities, and each of them is granted the right to discuss the contents of the audit with the Independent Accountant making the same and to secure from the Independent Accountant such additional information respecting the matters therein set out as may be reasonably required.

Section 12.3 Restrictions as to Free Service. The County will not furnish or permit to be furnished any free service from the System to the State of Alabama, any county or incor-

porated municipality or any agency, instrumentality, person, firm or corporation whatsoever, other than to itself and its agencies. All services furnished from the System shall be charged for at the rates at the time established therefor (except for those instances in which the County has entered into specific agreements with particular customers, which special agreements will not, in the aggregate, affect System Revenues by more than \$100,000).

Section 12.4 Discontinuance of Service on Non-Payment of Bills and Charges. If the account of any user of utility service supplied by the System shall remain unpaid for a period of thirty days after such account shall become due (or such longer period, if any, as may be required for compliance with applicable federal and state law), the County thereupon will use its best efforts promptly to discontinue furnishing service to such user whose account shall so remain unpaid, but upon subsequent payment of the account, including any penalties which may be provided for in the applicable schedule of rates of the County, the County may thereafter furnish service to such user until such time as his account shall again remain unpaid for a period of thirty days after such account shall become due (or such longer period, if any, as may be required for compliance with applicable federal and state laws), whereupon the County will again use its best efforts to the end that the furnishing of service shall again be discontinued. The schedule of rates for service furnished by and from the System shall provide that all accounts for such service shall become due not less often than once each calendar quarter.

Section 12.5 Maintenance of Rates. (a) The County hereby covenants and agrees to fix, revise and maintain such rates for services furnished by the System as shall be sufficient (i) to provide for the payment of the interest and premium (if any) on and the principal of the Parity Securities, as and when the same become due and payable, (ii) to provide for the payment of the Operating Expenses and (iii) to enable the County to perform and comply with all of its covenants contained in the Indenture.

(b) The County will make from time to time, to the extent permitted by law, such increases and other changes in such rates and charges as may be necessary to comply with the provisions of the preceding paragraph and to provide, in each Fiscal Year, Net Revenues Available for Debt Service in an amount that shall result in compliance with each of the following two requirements (such requirements being referred to herein collectively as the "Rate Covenant"):

(i) the sum of (A) Net Revenues Available for Debt Service for a given Fiscal Year and (B) the Prior Years' Surplus as of the beginning of such Fiscal Year shall not be less than one hundred and ten percent (110%) of the aggregate amount payable during such Fiscal Year as debt service on all outstanding Parity Securities; and

(ii) the Net Revenues Available for Debt Service for a given Fiscal Year shall not be less than eighty percent (80%) [or, in the case of any Fiscal

Year beginning on or after October 1, 2007, one hundred percent (100%)] of the aggregate amount payable during such Fiscal Year as debt service on all outstanding Parity Securities.

For purposes of the Rate Covenant, (a) debt service on the Parity Securities shall not include any interest (i.e., accrued interest or capitalized interest) paid with proceeds of Parity Securities, (b) debt service shall be reduced by any amounts received by the County during the Fiscal Year in question pursuant to Qualified Swaps, and (c) debt service shall be increased by any amounts paid by the County during such Fiscal Year pursuant to Qualified Swaps.

(c) The County's Director of Finance shall, within sixty (60) days after the end of each Fiscal Year, (i) determine whether or not the Net Revenues Available for Debt Service and Prior Years' Surplus for the then most recently completed Fiscal Year were sufficient to result in compliance with the Rate Covenant for such Fiscal Year (the "Historical Evaluation"), (ii) determine whether or not the combination of the Net Revenues Available for Debt Service for the then most recently completed Fiscal Year (subject to adjustment in the manner hereinafter described) and the Prior Years' Surplus as of the beginning of the then current Fiscal Year would be sufficient to result in compliance with the Rate Covenant for the then current Fiscal Year (the "Immediate Prospective Evaluation"), and (iii) determine whether or not the Net Revenues Available for Debt Service for the then most recently completed Fiscal Year (subject to adjustment in the manner hereinafter described) were equal to or greater than 100% of Maximum Annual Debt Service (the "Extended Prospective Evaluation"). For purposes of the Immediate Prospective Evaluation and the Extended Prospective Evaluation, the Net Revenues Available for Debt Service for the preceding Fiscal Year may be adjusted to give effect to any increase in the rates and charges for services furnished by the System that was put into effect after the beginning of such Fiscal Year.

If at the beginning of any Fiscal Year the County's Director of Finance makes the afore-said determinations and concludes that the County has failed to satisfy the Historical Evaluation, the Immediate Prospective Evaluation or the Extended Prospective Evaluation, then a written notice setting forth such determinations and the conclusions reached shall be delivered, no later than December 10 in such Fiscal Year, to the Trustee and to each member of the Governing Body. The County hereby covenants, in the event of the delivery of any such notice of failure to satisfy the Historical Evaluation or the Immediate Prospective Evaluation (or both), to make an increase in the rates and charges for services furnished by the System, in an amount intended to result in compliance with the rate covenant contained in subsection (b), with such rate increase to be effective no later than January 1 in such Fiscal Year.

Section 12.6 Continued Operation of the System; Transfer of the System. The County will not hereafter sell, transfer, lease or otherwise dispose of or cease control of the whole or any essential operating part of the System (except pursuant to Section 12.10 or 12.11 hereof) until all principal of and interest and premium (if any) on the Parity Securities shall have been paid in full, or unless and until provision for such payment shall have been made, as per-

mitted in Article XVI hereof. So long as any of the Parity Securities shall remain outstanding, the County will keep the System in good repair and efficient operating condition, making from time to time all needed repairs and replacements thereto, and it will continuously operate the System in an economical and efficient manner.

If the laws of Alabama at the time shall permit such action to be taken, nothing contained in this section shall prevent the transfer by the County of the entire System to a public corporation whose property and income are not subject to taxation and which has the power to own and operate the System; provided that (a) upon any such transfer, the due and punctual payment of the principal of and interest on the Parity Securities according to their tenor and the due and punctual performance and observance of all the agreements and conditions provided in this Indenture to be kept and performed by the County shall be expressly assumed in writing by the corporation to which the System shall be so transferred; (b) such transfer shall not cause or result in any mortgage or other lien being affixed to or imposed on the System or the revenues therefrom that will be prior to or on a parity with the lien of the pledge herein made for the benefit of the Parity Securities; and (c) the County shall deliver to the Trustee an opinion of Bond Counsel to the effect that such transfer shall not result in the interest on the Parity Securities becoming subject to federal income taxation.

Nothing contained in this section shall be construed to prevent the County from disposing of portions of the System that may become obsolete or worn out or that may no longer be needed for the efficient operation of the System.

Section 12.7 Warranties and Representations Concerning Title to the System. The County warrants its title to the System as it presently exists to be free and clear of every lien, encumbrance or charge other than Permitted Encumbrances. The County further warrants and represents that no pledges of, or agreements respecting, the revenues from the System are now outstanding other than those made herein.

Except to the extent specifically permitted otherwise by the provisions of the third paragraph of this section, the County will maintain its existence, will not dissolve, and will not consolidate with or merge into another county or political subdivision or permit one or more other counties or political subdivision to consolidate with or merge into it. Further, the County will use its best efforts to maintain, preserve and renew all the rights and powers provided to it by the constitution or any applicable laws of the State of Alabama or of the United States of America.

If the constitution and laws of the State of Alabama at the time shall permit such action to be taken, nothing contained in this section shall prevent the consolidation of the County with, or the merger of the County into, any county or political subdivision which has authority to undertake and perform the obligations and agreements of the County under the Indenture; provided that upon any such consolidation or merger the following conditions shall be satisfied: (i) the due and punctual payment of the principal of and the interest and premium (if any) on the

Parity Securities according to their tenor and the due and punctual performance and observance of all the agreements and conditions contained in the Indenture to be kept and performed by the County shall be expressly assumed in writing by the corporation resulting from such consolidation or surviving such merger; (ii) such consolidation or merger shall not cause or result in any pledge or lien being imposed on the moneys pledged under the Indenture that will be prior to the pledge made in the Indenture for the benefit of the Parity Securities; and (iii) the County shall deliver to the Trustee an opinion of Bond Counsel to the effect that such consolidation or merger shall not cause or result in the interest income on any of the Parity Securities becoming subject to income taxation by the United States of America, the State of Alabama or any political subdivision of either thereof.

Section 12.8 System to be Kept Free of Prior Liens. The County will keep the System free and clear from all liens, encumbrances and charges other than Permitted Encumbrances, but it may defer payment of any claim against the System or the revenues therefrom pending the bona fide contest of any such claim unless by such action the title of the County to the System or any part thereof or the revenues therefrom shall be materially endangered or the System or any part thereof shall be subject to loss or forfeiture, in which event any such payment then due shall not be deferred. Nothing herein contained shall be construed to prevent the County from hereafter acquiring from other governmental entities properties that are to constitute additions or improvements to the System, even though the properties to be acquired, or the revenues derived therefrom, have been subjected, prior to the County's acquisition thereof, to a lien that is or may be prior to the lien of the Indenture.

Section 12.9 Priority of Pledge. The pledge of the Pledged Revenues herein made shall be prior and superior to any pledge thereof hereafter made for the benefit of any securities hereafter issued by the County (other than Additional Parity Securities), and the County agrees that in the event it should hereafter issue any securities (other than Additional Parity Securities) or make any contract payable out of the Pledged Revenues or for which any part of the said revenues may be pledged, the County will, in the proceedings under which any such securities or contract are authorized, recognize the priority of the pledge of the Pledged Revenues herein made. The County will not place any mortgage, lien or other encumbrance on the System unless such mortgage, lien or other encumbrance is junior or subordinate in all respects to the pledge herein made and the lien herein created.

Section 12.10 Sale or Disposition of Personal Property. While the County is not in default under this Indenture, it may, without the consent of or any release from the Trustee, sell or otherwise dispose of any machinery, equipment or other personal property (including mains and pipes embedded in land but not including land itself or any building thereon) that shall have become inadequate, obsolete, worn out, unsuitable for use or undesirable or unnecessary for use as a part of the System. The proceeds of any such sale or other disposition shall not be regarded

as revenues of the System which are subject to the lien of this Indenture or which are required by the provisions hereof to be paid into the Revenue Account.

Section 12.11 Sale or Disposition of Portions of the System. While the County is not in default under this Indenture, the County may sell or otherwise dispose of any part of the System (including, without limitation, real property or improvements or buildings thereon or machinery, equipment and other personal property not described in Section 12.10 hereof), and the Trustee shall consent to such sale or other disposition, upon deposit by the County with the Trustee of the following:

(i) a resolution of the Governing Body describing in reasonable detail the property to be released, stating the consideration to be received by the County for such sale or disposition, stating that the County is not in default under any of the provisions of this Indenture, and requesting such release;

(ii) a certificate of a licensed engineer, who may be an employee of the County, stating that the property to be released is not and will not be needed by the County for the safe, efficient and economical operation of the remaining portions of the System and that the consideration to be received by the County for such sale or disposition is not less than the reasonable value of the property to be released; and

(iii) the proceeds from such sale or other disposition.

Upon compliance by the County with the foregoing conditions, the Trustee shall, at the expense of the County, execute and deliver to the County any and all instruments that may be necessary to release such property from the lien or encumbrance imposed by this Indenture.

Subject to the provisions of the next paragraph, the proceeds from any such sale or other disposition of any part or parts of the System shall be deposited in the Revenue Account, unless the Governing Body shall provide the Trustee with written directions to apply all or a portion of such proceeds for the redemption of Parity Securities prior to maturity in accordance with the terms of the Indenture and on the earliest practicable date permitted thereby, in which event the proceeds from such sale or other disposition to be used for such purpose shall be deposited in the Redemption Fund.

Section 12.12 Insurance with Respect to the System. The County will take out and continuously maintain in effect insurance with respect to those components of the System other than underground mains, laterals and collection lines against such risks as are customarily insured against by systems similar in size and character to the System, paying as the same become due all premiums with respect thereto, including but not limited to:

(a) insurance to the extent of the full insurable value of the insured portions of the System against loss or damage by fire or other casualty, with uniform standard extended coverage endorsement limited only as may be provided in the standard form of extended coverage endorsement at the time in use in the State of Alabama;

(b) comprehensive public liability insurance against liability for bodily injury to or death of persons and for damage to or loss of property occurring on or about the properties comprising the System or as a result of operation of the System (including the operation of vehicles owned or leased by the County and used in connection with the System) in such amounts as are customarily carried by systems similar in size and character to the System; provided that the County may, at its election, be self-insured for such risks to the extent customary at the time for systems similar in size and character to the System; and

(c) workmen's compensation insurance respecting all employees of the System in such amount as is customarily carried by systems similar in size and character to the System; provided that the County may, at its election, be self-insured for such risk to the extent customary at the time for systems similar in size and character to the System.

All policies evidencing the insurance required by the terms of this section shall be taken out and maintained in generally recognized responsible insurance companies qualified under the laws of the State of Alabama to assume the respective risks undertaken.

Each insurance policy required to be carried by this section shall contain, to the extent obtainable, an agreement by the insurer that (i) the County may not, without the consent of the Trustee, cancel such insurance or sell, assign or dispose of any interest in such insurance, such policy, or any proceeds thereof, (ii) such insurer will notify the Trustee if any premium shall not be paid when due or any such policy shall not be renewed prior to the expiration thereof, and (iii) such insurer shall not cancel any such policy except on sixty (60) days' prior written notice to the Trustee.

All policies evidencing the insurance required to be carried by this section shall be deposited with the Trustee; provided, however, that in lieu thereof the County may deposit with the Trustee a certificate or certificates of the respective insurers attesting the fact that such insurance is in force and effect. Prior to the expiration of any such policy, the County will furnish to the Trustee evidence reasonably satisfactory to the Trustee that such policy has been renewed or replaced by another policy or that there is no necessity therefor under this Indenture.

Section 12.13 Damage and Destruction Provisions. If the System is destroyed, in whole or in part, or is damaged, by fire or other casualty, to such extent that the loss to the System resulting therefrom is not greater than \$25,000,000, the County will promptly repair,

replace or restore the property destroyed or damaged to substantially the same condition as prior to the event causing such damage or destruction with such changes, alterations or modifications (including the substitution and addition of other property) as will not significantly impair the operating utility of the System. The County will apply so much as may be necessary of any Net Insurance Proceeds referable to such damage or destruction to the payment of the costs of such repair, replacement or restoration, and if such costs exceed the available Net Insurance Proceeds, the County will provide any additional moneys required for the payment of such costs. In the event that the total costs of such repair, replacement and restoration are less than such Net Insurance Proceeds, the County will pay into the Revenue Account the amount by which such proceeds exceed said total costs.

If the System is destroyed, in whole or in part, or is damaged, by fire or other casualty, to such extent that the loss to the System resulting therefrom is greater than \$25,000,000, the County will promptly so notify the Trustee in writing. The Net Insurance Proceeds recovered by the County and the Trustee on account of such damage or destruction shall be paid to and held by the Trustee. Pursuant to written directions to be given to the Trustee by the Governing Body not more than sixty (60) days following the event causing such damage or destruction, such proceeds shall be applied by the Trustee in one or both of the following ways (the amount, if any, to be applied in each such way to be specified in such written directions):

(a) payment of the costs of repairing, replacing or restoring the property damaged or destroyed to the extent necessary for it to have substantially the same operating utility that it had prior to the event causing such damage or destruction, with such changes, alterations or modifications as shall be specified by the Governing Body;

(b) the redemption of Parity Securities prior to maturity in accordance with the terms of the Indenture and on the earliest practicable date permitted thereby, in which case such portion of the Net Insurance Proceeds to be used therefor shall be deposited in the Redemption Fund.

In the event that the Net Insurance Proceeds held by the Trustee (or any specified portion thereof) are to be applied for payment of the costs of repairing, replacing or restoring the property damaged or destroyed, a special construction fund shall be established with the Trustee and such proceeds (or specified portion thereof) shall be deposited therein, and the Trustee will provide for such proceeds (or specified portion thereof) to be disbursed as needed for the payment of such costs pursuant to requisitions submitted by the County. Any balance of the Net Insurance Proceeds (or any balance of the portion thereof specified for the payment of such costs) remaining after the payment of all such costs shall be paid into the Revenue Account. In the event that the Net Insurance Proceeds (or the portion thereof specified for the payment of such costs) are not sufficient to pay in full the costs of such repair, replacement or restoration, the County will nonetheless complete the work thereof and will pay that portion of the costs thereof in excess of the Net Insurance Proceeds (or specified portion thereof) available for the payment of such costs.

All property acquired in connection with the repair, replacement or restoration of any part of the System pursuant to the provisions of this Section 12.13 shall be and become part of the System, with the revenues derived therefrom being subject to the pledge made herein for the benefit of the Holders of the Parity Securities.

Section 12.14 Fidelity Bonds. The County will at all times carry fidelity bonds on all of its officers and employees who may handle funds of the County appertaining to the System, such bonds to be in such amounts as are customarily carried by systems similar in size and character to the System.

Section 12.15 Tax Covenants. The County recognizes that the Holders of the Series 1997-A Warrants from time to time will have accepted them on, and paid therefor a price which reflects, the understanding that interest on the Series 1997-A Warrants is excluded from gross income for federal income tax purposes under the laws in force at the time the Series 1997-A Warrants shall have been delivered. In this connection the County covenants (i) that it will not take any action or omit to take any action if the taking of such action or the failure to take such action, as the case may be, will result in the interest on any of the Series 1997-A Warrants becoming includable in gross income for purposes of federal income taxation, (ii) that it will use the "proceeds" of the Series 1997-A Warrants and any other funds of the County in such a manner that the use thereof, as reasonably expected by the County at the time of issuance of the Series 1997-A Warrants, will not cause the Series 1997-A Warrants to be "arbitrage bonds" under Section 103(b)(2) and Section 148 of the Code and the regulations thereunder and (iii) that it will satisfy the requirements of Section 148(f) of the Code and the applicable regulations thereunder. The County further covenants and agrees that it will not permit at any time any "proceeds" of the Series 1997-A Warrants or any other funds of the County to be used, directly or indirectly, in a manner which would result in any Series 1997-A Warrant being classified as a "private activity bond" within the meaning of Section 141(a) of the Code. The officers and employees of the County shall execute and deliver from time to time, on behalf of the County, such certificates, instruments and documents as shall be deemed necessary or advisable to evidence compliance by the County with said Section 103(b)(2) and Section 148 and the regulations thereunder with respect to the use of the proceeds of the Series 1997-A Warrants. Such certificates, instruments and documents may contain such stipulations as shall be necessary or advisable in connection with the stated purpose of this section and the foregoing provisions hereof, and the County hereby covenants and agrees to comply with the provisions of any such stipulations throughout the term of the Series 1997-A Warrants.

Section 12.16 Compliance with Requirements of Law. The County will comply with all of the terms, provisions and requirements of the Act and any other state or federal laws which are applicable to the County by reason of the ownership and operation of the System or the issuance of the Parity Securities. Without limiting the generality of the foregoing, the County will use its best efforts to comply with the requirements imposed on it by the Consent

Decree entered in those civil actions consolidated in the United States District Court, Northern District of Alabama, and styled *United States of America v. Jefferson County, Alabama, et al.*, Civil Action No. 94-G-2947-S, and *R. Allen Kipp, Jr., et al. and Cahaba River Society, Inc. v. Jefferson County, Alabama, et al.*, Civil Action No. 93-G-2492-S.

Section 12.17 Levy of Sewer Tax. As long as it is permitted to do so by applicable law, the County will levy and collect, on an annual basis, the Sewer Tax and will apply the revenues derived therefrom solely for purposes related to the System.

Section 12.18 Payment of Parity Securities. The County will pay or cause to be paid, out of the sources of payment provided in the Indenture, the principal of and the interest and premium (if any) on the Parity Securities as specified therein, and it will otherwise perform all obligations that either expressly or by reasonable implication are imposed on it in the Indenture and it will not default hereunder.

ARTICLE XIII

EVENTS OF DEFAULT AND REMEDIES OF TRUSTEE AND PARITY SECURITYHOLDERS

Section 13.1 Events of Default Defined. Any of the following shall be "Events of Default" under the Indenture, and the term "Event of Default" shall mean, whenever it is used in the Indenture, any one or more of the following conditions or events:

(a) failure by the County to pay the principal of or the interest or premium (if any) on any Parity Security as and when the same become due as therein and herein provided (whether such shall become due at maturity or by redemption, acceleration or otherwise);

(b) failure by the County to satisfy the Rate Covenant, provided that any such failure shall not constitute an Event of Default if (i) the Trustee receives evidence satisfactory to it that an increase in the rates charged for services furnished by the System has occurred pursuant to the provisions of the ordinance of the County that governs such rates, or (ii) the County employs a utility system consultant to review the System and its existing rates and fees and makes a good faith effort to comply with the recommendations of such consultant;

(c) failure by the County to perform or observe any agreement, covenant or condition required by the Indenture to be performed or observed by it [other than its agreement to pay the principal of and the interest and premium

m (if any) on the Parity Securities or the Rate Covenant] after thirty (30) days' written notice (which said notice must state that it is a "notice of default" hereunder) to it of such failure given by the Trustee or by the Holders of not less than twenty-five percent (25%) in aggregate principal amount of the Parity Securities then outstanding hereunder, unless during such period or any extension thereof the County has commenced and is diligently pursuing appropriate corrective action;

(d) any material warranty, representation or other statement by or on behalf of the County contained in the Indenture, or in any document furnished by the County in connection with the issuance and sale of any of the Parity Securities, being false or misleading in any material respect at the time made; or

(e) an order, judgment or decree shall be entered by any court of competent jurisdiction (i) appointing a receiver, trustee or liquidator for the System, (ii) approving a petition filed by the County under the federal or any state bankruptcy laws, (iii) granting relief to the County under federal or state bankruptcy laws or relief substantially similar to that afforded under the said laws or (iv) assuming the custody or control of the System (or any part thereof) under the provisions of any other law for the relief or aid of debtors, and such order, judgment or decree shall not be vacated or set aside or stayed within ninety (90) days from the date of the entry thereof, or the County shall file a petition in bankruptcy or make an assignment for the benefit of its creditors or consent to the appointment of a receiver of the whole or any substantial part of its properties or shall file a petition or answer seeking relief under the federal or any state bankruptcy laws.

Section 13.2 Remedies on Default. Upon the occurrence and continuation of any Event of Default, the Trustee shall have the following rights and remedies:

(a) Upon the occurrence and continuation of any Event of Default described in clause (a) of Section 13.1 hereof, the Trustee shall, and, upon the occurrence and continuation of any other Event of Default described in Section 13.1 hereof, the Trustee may, declare the Parity Securities to be immediately due and payable, whereupon they shall, without further action, become and be immediately due and payable, anything in this Indenture or in the Parity Securities to the contrary notwithstanding.

(b) The Trustee may, by civil action, mandamus or other proceedings, protect, enforce and compel performance of all duties of the officials of the County, including the fixing of sufficient rates, the collection of revenues, the proper segregation of the revenues of the System and the proper application thereof and may, without limitation of the foregoing, proceed to protect and

enforce its rights and the rights of the Parity Securityholders by a suit or suits, whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power granted herein or for the enforcement of any other proper, legal or equitable remedy, as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce its rights and the rights of the Parity Securityholders hereunder.

(c) The Trustee shall be entitled upon or at any time after the commencement of any proceedings instituted with respect to an Event of Default, as a matter of strict right, upon the order of any court of competent jurisdiction, to the appointment of a receiver to administer and operate the System, with power to fix and charge rates and collect revenues sufficient to provide for the payment of the Parity Securities and any other obligations outstanding against the System or the revenues thereof and for the payment of expenses of operating and maintaining the System and with power to apply the income and revenues of the System in conformity with the Act and the Indenture.

The provisions of the preceding subparagraph (a), however, are subject to the condition that if, after the principal of the Parity Securities shall have been so declared to be due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the County shall cause to be deposited with the Trustee a sum sufficient to pay all matured installments of interest upon all Parity Securities and the principal of any and all Parity Securities which shall have become due otherwise than by reason of such declaration (with interest upon such principal and on overdue installments of interest, at the rates per annum determined as provided in the Parity Securities) and such amount as shall be sufficient to cover reasonable compensation and reimbursement of expenses payable to the Trustee, and all Events of Default hereunder other than nonpayment of the principal of the Parity Securities which shall have become due by said declaration shall have been remedied, then, in every such case, such Event of Default shall be deemed waived and such declaration and its consequences rescinded and annulled, and the Trustee shall promptly give written notice of such waiver, rescission or annulment to the County; but no such waiver, rescission and annulment shall extend to or affect any subsequent Event of Default or impair any right or remedy consequent thereon.

Section 13.3 Application of Moneys Collected. All moneys collected by the Trustee pursuant to this article or pursuant to any right given to it or action taken by it under the provisions of this article, together with all other funds of the County from the System then held by it or the Trustee hereunder, shall, after payment of all amounts for which the Trustee has a lien under Section 14.7 hereof, be applied in the following order, on the date or dates fixed by the Trustee, and, in case of the distribution of such money on account of principal (or premium, if any) or interest, upon presentation of the Parity Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

(a) Unless the principal of all Parity Securities shall have become or shall have been declared due and payable, all such moneys shall be applied:

First. To the payment to the persons entitled thereto of interest then due on the Parity Securities, with interest on overdue installments of such interest, and if the amount available shall not be sufficient to pay in full all such installments plus the said interest thereon, then to the proportionate payment of all such installments and the interest thereon, according to the amounts thereof, without preference or priority of any installment of interest over any other installment or any discrimination or privilege among the persons entitled thereto.

Second. To the payment to the persons entitled thereto of the unpaid principal of and premium, if any, on the Parity Securities which shall have matured, with interest on overdue installments of principal and premium, if any, from the respective dates upon which they became due, and, if the amount available shall not be sufficient to pay in full all such principal and premium, if any, together with the aforesaid interest thereon, then to the proportionate payment of such principal, premium, if any, and interest, according to the amounts thereof, without preference or priority of any installment of principal over any other installment or any discrimination or privilege among the persons entitled thereto; and

Third. The surplus, if any, to the Revenue Account.

(b) If the principal of all the Parity Securities shall have become or been declared due and payable, all such moneys shall be applied as follows:

First. To the payment of the principal and interest then due and unpaid upon the Parity Securities, with interest on overdue principal and on overdue interest, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Parity Security over any other Parity Security, in proportion to the amounts for both principal and interest due respectively to the persons entitled thereto, without any discrimination or privilege among such persons; and

Second. The surplus, if any, to the County or to whomsoever may be entitled thereto.

Section 13.4 Parity Securityholders Need Not be Joined in Actions. All rights of action (including the right to file proof of claims) under this Indenture or under any of the Parity Securities may be prosecuted and enforced by the Trustee without the possession of any of the Parity Securities or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as trustee of

an express trust without the necessity of joining as plaintiffs or defendants any Parity Securityholders and any recovery shall (after provisions for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) be for the ratable benefit of the Parity Securityholders in respect of which such judgment has been recorded.

Section 13.5 Rights of the Parity Securityholders to Direct Proceedings. The Holders of a majority in aggregate principal amount of the Parity Securities then outstanding shall have the right, by an instrument in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all remedial proceedings available to the Trustee under this Indenture or exercising any trust or power conferred on the Trustee by this Indenture.

Section 13.6 Limitation on Suits by Parity Securityholders. No Parity Securityholder shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless (a) such Holder has previously given written notice to the Trustee of a continuing Event of Default; (b) the Holders of not less than twenty-five percent (25%) in aggregate principal amount of the Parity Securities then outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder; (c) such Holder or Holders have offered to the Trustee indemnity in the manner provided in Section 14.3(e) hereof; (d) the Trustee for thirty days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and (e) no direction inconsistent with such written request has been given to the Trustee during such thirty-day period by the Holders of a majority in aggregate principal amount of the outstanding Parity Securities, it being understood and intended that no one or more Holders shall have any right in any manner whatever by virtue of, or by availing of, any provisions of this Indenture to affect, disturb or prejudice the rights of any other Holders, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all the Holders.

Notwithstanding any other provision hereof, the right of the Parity Securityholders, which is absolute and unconditional, to receive payment of the principal of and the interest and premium (if any) on the Parity Securities on or after the due date of the same, but solely from the sources of payment provided herein, as therein and herein expressed, or to institute suit for the enforcement of such payment on or after such due date, or the obligation of the County, which is also absolute and unconditional, to pay, but solely from the said sources of payment, the principal of and the interest on the Parity Securities to the respective Holders thereof at the time and place in the Parity Securities expressed, shall not be impaired or affected without the consent of such Holder; provided, however, that no Parity Securityholder shall be entitled to take any action or institute any such suit to enforce the payment of his Parity Securities, whether for principal or interest, if and to the extent that the taking of such action or the institution or prosecution of any such suit or the entry of judgment therein would under applicable law result

in a surrender, impairment, waiver or loss of the lien hereof upon the revenues from the System, or any part thereof, as security for the Parity Securities held by any other Parity Securityholder.

Section 13.7 Remedies Cumulative. No remedy herein conferred upon or reserved to the Trustee or to the Parity Securityholders is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 13.8 Delay or Omission Not a Waiver. No delay or omission of the Trustee or any Parity Securityholder to exercise any right or power accruing upon any default occurring and continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Indenture to the Trustee or the Parity Securityholders may be exercised from time to time and as often as may be deemed expedient by the Trustee or the Parity Securityholders.

Section 13.9 Remedies Subject to Applicable Law. All rights, remedies and powers provided by this Indenture may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Indenture are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render the Indenture invalid or unenforceable.

Section 13.10 Waivers of Past Defaults Under the Indenture. The Holders of not less than a majority in aggregate principal amount of the outstanding Parity Securities may, on behalf of the Holders of all outstanding Parity Securities, waive any past default under this Indenture and its consequence, except for the following types of defaults:

- (a) any default in the payment of the principal of or interest or premium (if any) on any Parity Security, or
- (b) any default or failure in respect of any covenant or provision of this Indenture which under Article XIV hereof cannot be modified or amended without the consent of the Holder of each outstanding Parity Security affected.

Upon any such waiver, such default shall cease to exist, and an Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

ARTICLE XIV

THE TRUSTEE

Section 14.1 **Certain Duties and Responsibilities.** (a) Except during the continuance of an Event of Default,

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

(b) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from its own gross negligence or its own willful misconduct, except that

(i) this subsection shall not be construed to limit the effect of subsection (a) of this section;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a responsible officer or officers of the Trustee unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in aggregate principal amount of the outstanding Parity Securities of each series relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance

of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this section.

Section 14.2 Notice of Defaults. Within ninety (90) days after the occurrence of any Event of Default the Trustee shall give notice by registered or certified mail to the Parity Securityholders of such Event of Default known to the Trustee; provided, however, that except in the case of a default in the payment of the principal of or interest or premium (if any) on any Parity Securities, the Trustee shall be protected in withholding such notice if and so long as a responsible officer of the Trustee in good faith determines that the withholding of such notice is in the interests of the Parity Securityholders.

Section 14.3 Certain Rights of the Trustee. Except as otherwise provided in Section 14.1 hereof:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, warrant or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, election, order or demand of the County shall be sufficiently evidenced by an instrument signed in the name of the County by the President or other presiding officer of the Governing Body (unless otherwise in this Indenture specifically prescribed), and any resolution of the County may be evidenced to the Trustee by a copy thereof certified by the Minute Book Clerk of the County;

(c) the Trustee may consult with Independent Counsel and the written advice or opinion of such Independent Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(d) whenever, in the administration of the trust of this Indenture, the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be

conclusively proved and established by a certificate of the County, and such certificate of the County shall, in the absence of negligence or bad faith on the part of the Trustee, be full warranty to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture upon the faith thereof;

(e) the Trustee shall be under no obligation to exercise any of the rights, powers or remedies vested in it by this Indenture at the request or direction of any of the Parity Securityholders pursuant to this Indenture, unless such Parity Securityholders shall have furnished to the Trustee satisfactory indemnity for the reimbursement of all expenses to which it may be put and to protect it against all liability which might be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit; and

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys, and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

Section 14.4 Trustee not Responsible for Certain Matters Respecting Parity Securities or Security Therefor. The recitals contained herein and in the Parity Securities, except the Trustee's certificate of authentication and its recital of its authority to accept the trusts hereof, shall be taken as the statements of the County, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Parity Securities. The Trustee is not responsible for the recording of this Indenture or for the payment of taxes, charges, assessments and liens upon the System, or for insuring the System or the maintenance thereof, or for the sufficiency of the security for the Parity Securities.

Section 14.5 Trustee May Hold Parity Securities. The Trustee, in its individual or any other capacity, may become the Holder or pledgee of Parity Securities and may otherwise deal with the County with the same rights it would have if it were not Trustee hereunder.

Section 14.6 Right of the Trustee to Perform Certain Acts on Failure of the County. In case the County shall fail seasonably to pay or to cause to be paid any tax, assessment, or governmental or other charge upon any part of the System or the premiums on insurance on the

System or the expenses of maintaining or preserving the System, the Trustee may pay such tax, assessment, governmental charge, premiums or expenses without prejudice, however, to any rights of the Trustee or the Parity Securityholders arising in consequence of such failure; and any amount at any time so paid under this section, with interest thereon from the date of payment at the Trustee's prime lending rate plus two percent (2%) per annum or the maximum rate of interest allowed by law, whichever is less, shall be repaid by the County upon demand, and shall become additional indebtedness secured by this Indenture, but the Trustee shall be under no obligation to make any such payment unless it shall have been requested to do so by the Holders of not less than twenty-five percent (25%) of the aggregate principal amount of the outstanding Parity Securities and shall have been provided with adequate funds for the purpose of such payment.

Section 14.7 Compensation of the Trustee; Lien Therefor. The Trustee shall have a lien on the revenues of the System and all funds held or collected by the Trustee as such (except funds held in trust for the benefit of the Holders of particular Parity Securities) with right of payment prior to payment on account of interest, principal or premium (if any) of any Parity Security, for reasonable compensation for all services rendered by it hereunder and for all reasonable expenses, advances, disbursements and counsel fees incurred or made in and about the execution of the trusts hereby created and exercise and performance of the powers and duties of the Trustee hereunder and the cost and expense incurred in defending against any liability in the premises of any character whatsoever (unless such liability is adjudicated to have resulted from the negligence or willful default of the Trustee).

Section 14.8 Resignation and Removal of the Trustee; Appointment of Successor. No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this article shall become effective until the acceptance of appointment by the successor Trustee under Section 14.9 hereof.

The Trustee may resign at any time by giving written notice thereof to the County. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within thirty (30) days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

The Trustee may be removed at any time (a) by the Holders of a majority in aggregate principal amount of the outstanding Parity Securities by an instrument or instruments in writing delivered to the Trustee and to the County or (b) by the County, if no Event of Default exists, by written notice delivered to the Trustee.

If at any time the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then (i) the County may remove the

Trustee, or (ii) any Parity Securityholder who has been a Parity Securityholder for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, the County shall promptly appoint a successor Trustee. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee shall be appointed by the Holders of a majority in aggregate principal amount of the outstanding Parity Securities of each series by an instrument or instruments in writing delivered to the County and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee and supersede the successor Trustee appointed by the County. If no successor Trustee shall have been so appointed by the County or the Parity Securityholders and accepted appointment in the manner hereinafter provided, any Parity Securityholder who has been a Parity Securityholder for at least six months may, on behalf of himself and all other similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

The County shall give notice by registered or certified mail to the Holders of all outstanding Parity Securities and to each Rating Agency of each resignation and each removal of the Trustee and each appointment of a successor Trustee. Each notice shall include the name and address of the principal corporate trust office of the successor Trustee.

Section 14.9 Acceptance of Appointment by Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the County and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the estate and title of the retiring Trustee to the Trust Estate and all the rights, powers, trusts and duties of the retiring Trustee; but, on request of the County or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the estate and title of the retiring Trustee to the Trust Estate and all the rights, powers, and trusts of the retiring Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder, subject nevertheless to its lien, if any, provided for in Section 14.7 hereof. Upon request of any such successor Trustee, the County shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such estate, title, rights, powers and trusts.

Section 14.10 Merger or Consolidation of the Trustee. Any corporation or association into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or association succeeding to all or substantially

all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Parity Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Parity Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Parity Securities.

Section 14.11 Paying Agents. (a) Any Paying Agent other than the Trustee shall signify its acceptance of such appointment and its assumption of the duties and obligations imposed upon it by this Indenture by execution and delivery of an agreement satisfactory to the Trustee and the County.

(b) Any Paying Agent may resign at any time by giving 30 days' notice to the County and the Trustee; provided, however, that no such resignation shall become effective until a successor Paying Agent has been appointed and has accepted its duties and obligations hereunder.

(c) The County may, with the consent of the Trustee (if such Paying Agent is other than the Trustee), remove any Paying Agent by giving 30 days' notice to such Paying Agent; provided, however, that no such removal shall be effective until a successor Paying Agent has been appointed and has accepted its duties and obligations hereunder.

(d) If any Paying Agent shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Paying Agent for any cause, the County shall appoint a successor Paying Agent.

(e) Any Paying Agent shall (i) be a commercial bank with trust powers or a trust company, (ii) have a combined capital and surplus of at least \$50,000,000, and (iii) be subject to supervision and examination by federal or state authority.

(f) Compensation of any Paying Agent shall be paid directly by the County.

(g) The provisions of the Indenture shall be applicable to any Paying Agent.

ARTICLE XV
AMENDMENTS AND SUPPLEMENTS
TO THE INDENTURE

Section 15.1 Supplemental Indentures Without Consent of Parity Securityholders. Without the consent of or any notice to any Parity Securityholders, the County and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(a) to add to the covenants of the County for the benefit of the Parity Securityholders, or to surrender any right or power herein conferred upon the County; or

(b) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions which shall not be inconsistent with the provisions of this Indenture, provided such action shall not adversely affect the interests of the Parity Securityholders; or

(c) to subject to this Indenture additional revenues, properties or collateral; or

(d) to authorize the issuance of Additional Parity Securities; or

(e) to grant to or confer or impose upon the Trustee for the benefit of the Parity Securityholders any additional rights, remedies, powers, authority, security, liabilities or duties which may lawfully be granted, conferred or imposed and which are not contrary to or inconsistent with the Indenture as theretofore in effect, provided that no such additional liabilities or duties shall be imposed upon the Trustee without its consent; or

(f) to authorize a different denomination or denominations of the Series 1997 Warrants or Series 1997-C Warrants and to make correlative amendments and modifications to the Indenture regarding exchangeability of Series 1997 Warrants or Series 1997-C Warrants of different denominations, redemptions of portions of Series 1997 Warrants or Series 1997-C Warrants of particular denominations and similar amendments and modifications of a technical nature; or

(g) to modify, alter, amend or supplement the Indenture in any other respect which is not materially adverse to the Parity Securityholders and which does not involve a change described in Section 15.2 hereof.

Before the County and the Trustee shall enter into any Supplemental Indenture pursuant to this section, there shall have been delivered to the Trustee an opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by the Indenture and the Act, complies with their respective terms, will, upon the execution and delivery thereof, be valid and binding upon the County in accordance with its terms and will not adversely affect the exemption from federal income taxation of interest on the Series 1997-A Warrants.

Section 15.2 Supplemental Indentures With Consent of Parity Securityholders. With the consent of the Holders of not less than a majority in aggregate principal amount of the outstanding Parity Securities, the County and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of modifying in any manner the rights of the Parity Securityholders under the Indenture; provided, however, that no such Supplemental Indenture shall, without the consent of the Holder of each outstanding Parity Security adversely affected thereby,

(1) change the security for, the stated maturity or mandatory redemption date of the principal of, or any installment of interest on, any Parity Security, or reduce the principal amount thereof or the interest thereon or any premium payable upon the redemption thereof, change the coin or currency in which any Parity Security or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the stated maturity thereof (or, in the case of redemption, on or after the redemption date), or

(2) reduce the percentage in principal amount of the outstanding Parity Securities, the consent of whose Holders is required for any such Supplemental Indenture, or

(3) eliminate or modify any provision of the Indenture, the elimination or modification of which by its terms requires the consent of the Holder of each Parity Security affected thereby, or

(4) create a lien or charge on the revenues from the System ranking prior to or on a parity of lien with the lien and pledge thereon contained herein (other than for Additional Parity Securities), or

(5) establish preference or priority as between the Parity Securities.

It shall not be necessary for any written consent of any Parity Securityholder under this section to approve the particular form of any proposed Supplemental Indenture, but it shall be sufficient if such consent shall approve the substance thereof.